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7 **STATE OF WASHINGTON**  
8 **PEND OREILLE COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,  
10 DEPARTMENT OF ECOLOGY,

11 Plaintiff,

12 v.

13 LEHIGH CEMENT COMPANY,

14 Defendant.

NO.

CONSENT DECREE

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## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology) and Lehigh Cement Company (Lehigh) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Lehigh to undertake the following remedial action(s) at the Lehigh Cement Company Closed Cement Kiln Dust (CKD) Pile Site (Site) (see Exhibit A):

(1) Install, operate and maintain an in-situ groundwater treatment system east of the Closed Cement Kiln Dust (CKD) Pile between Highway 31 and Sullivan Creek. The treatment system will consist of a hydraulic barrier that intercepts contaminated groundwater and directs it toward a treatment corridor. The treatment corridor will contain silicone tubes suspended within perforated plastic piping. Carbon dioxide will diffuse through the silicone tubing resulting in carbonic acid production, which will lower the pH. This, in turn, will decrease concentrations of metals in groundwater. Concentrations of arsenic, lead, chromium, and manganese and levels of pH in the groundwater exceed MTCA cleanup levels.

(2) Install, operate, and maintain a gravity drain along the southern edge of the Closed CKD Pile. The drain will intercept groundwater and redirect it away from the Closed CKD Pile. The intercepted water will be routed in the subsurface to an area south of the hydraulic barrier, unless it exceeds cleanup levels and requires treatment.

(3) Provide for groundwater monitoring in accordance with the Compliance Monitoring Plan approved by Ecology.

(4) Provide for and maintain institutional controls in the form of restrictive covenants, fences, and signs.

(5) Provide for the operation and maintenance of the cover and stormwater system for the Closed CKD Pile.

1 Ecology has determined that these actions are necessary to protect human health and  
2 the environment.

3 B. The Complaint in this action is being filed simultaneously with this Decree.  
4 An Answer has not been filed, and there has not been a trial on any issue of fact or law in this  
5 case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In  
6 addition, the Parties agree that settlement of these matters without litigation is reasonable and  
7 in the public interest, and that entry of this Decree is the most appropriate means of resolving  
8 these matters.

9 C. In signing this Decree, the Parties agree to its entry and agree to be bound by its  
10 terms.

11 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
12 Parties from any liability they may have with respect to matters alleged in the Complaint. The  
13 Parties retain the right to seek reimbursement, in whole or in part, from any other liable  
14 persons for sums expended under this Decree.

15 E. The requirements of this Decree will concurrently satisfy Lehigh's obligations  
16 for corrective action, as set forth in WAC 173-303-64620 (including financial assurance for  
17 corrective action). Lehigh has previously taken action to satisfy requirements for post-closure  
18 care, as set forth in WAC 173-303-400(3), incorporating by reference 40 C.F.R. § 265.117  
19 through 265.119, as well as in WAC 173-303-400(3)(c)(vi) and WAC 173-303-620(5) and (6).  
20 The requirements of this Decree continue to satisfy Lehigh's obligations for post-closure care.

21 F. This Decree shall not be construed as proof of liability or responsibility for any  
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
23 provided, however, that Lehigh shall not challenge the authority of the Attorney General and  
24 Ecology to enforce this Decree.

25 G. The Court is fully advised of the reasons for entry of this Decree, and good  
26 cause having been shown:

1 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 **II. JURISDICTION**

3 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
4 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

5 B. Authority is conferred upon the Washington State Attorney General by RCW  
6 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
7 notice and any required hearing, Ecology finds the proposed settlement would lead to a more  
8 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a  
9 settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

10 C. Ecology has determined that a release or threatened release of hazardous  
11 substances has occurred at the Site.

12 D. Ecology has given notice to Lehigh of Ecology's determination that Lehigh is a  
13 potentially liable person for the Site, as required by RCW 70.105D.020(16) and WAC  
14 173-340-500.

15 E. The actions to be taken pursuant to this Decree are necessary to protect public  
16 health and the environment.

17 F. This Decree has been subject to public notice and comment.

18 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
19 hazardous substances at the Site in compliance with the cleanup standards established under  
20 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

21 H. Lehigh has agreed to undertake the actions specified in this Decree and consents  
22 to the entry of this Decree under MTCA.

23 **III. PARTIES BOUND**

24 This Decree shall apply to and be binding upon the Parties to this Decree, their  
25 successors, and assigns. The undersigned representative of each party hereby certifies that he  
26 or she is fully authorized to enter into this Decree and to execute and legally bind such party to

1 comply with the Decree. Lehigh agrees to undertake all actions required by the terms and  
2 conditions of this Decree. No change in ownership or corporate status shall alter Lehigh's  
3 responsibility under this Decree. Lehigh shall provide a copy of this Decree to all agents,  
4 contractors, and subcontractors retained to perform work required by this Decree. Lehigh shall  
5 use best efforts to ensure that all work undertaken by such agents, contractors, and  
6 subcontractors complies with this Decree, with the understanding that Lehigh is responsible for  
7 compliance with this Decree.

#### 8 **IV. DEFINITIONS**

9 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200  
10 apply to the terms in this Decree.

11 A. Site: The Site, referred to as the Lehigh Cement Company Closed Cement Kiln  
12 Dust Pile Site, is generally located in the southeast quarter of Section 21, Township 39 North,  
13 Range 43 East, Willamette Meridian (approximately Milepost 14.67 on Washington State  
14 Route 31) near the town of Metaline Falls, Washington. The Site is more particularly  
15 described in Exhibit A to this Decree, which includes a detailed Site diagram. The Site  
16 constitutes a "facility" under RCW 70.105D.020(4).

17 B. Parties: Refers to the Washington State Department of Ecology and Lehigh  
18 Cement Company.

19 C. Defendant: Refers to Lehigh Cement Company.

20 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
21 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
22 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

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1. Lehigh owned and operated the Metaltine Falls cement plant from 1914 until 1989. From the early 1950s through 1989, cement kiln dust (CKD), a byproduct from the production of Portland cement, was disposed in an on-site landfill (also referred to herein as the CKD pile) located in the southeast quarter of Section 21, Township 39 North, Range 43 East, Willamette Meridian (WM) (see Exhibit A). In 1989, Lehigh sold the cement plant and surrounding land to the Lafarge Corporation. Lehigh retained ownership of the CKD landfill. Evidence of Lehigh's ownership of the landfill and the company's disposal of CKD to the landfill is contained in the following documents:

2. Lehigh owned and operated the CKD landfill as a dangerous waste facility after 1984, when CKD became subject to regulation under the amended Hazardous Waste Management Act (Chapter 70.105 RCW) and its implementing Dangerous Waste Regulations (Chapter 173-303 WAC).

3. Prior to 1984, CKD was exempt from regulation as a hazardous or dangerous waste by both the federal government and the State of Washington. In 1984, the CKD exemption was withdrawn by the state. CKD is currently still exempt from the federal hazardous waste regulations [40 CFR 261.4(b)(8)].

1           4.       On November 16, 1984, Lehigh submitted a "Notification of Dangerous Waste  
2       Activities" (Form 2) to notify Ecology that Lehigh would be generating and disposing  
3       dangerous waste (CKD) at the Meteline Falls cement plant.

4           5.       Pursuant to the November 16, 1984 notification, Lehigh was issued EPA/State  
5       identification number WAD 009063116. When Lehigh sold the cement plant in 1989, the  
6       identification number was transferred to the Lafarge Corporation, the new owner of the  
7       Meteline Falls cement plant. On August 17, 1995, Lehigh submitted a new "Notification of  
8       Dangerous Waste Activities" for the 13-acre tract on which Lehigh's CKD landfill is located.  
9       EPA/State identification number WAR 000004598 was assigned to the landfill. The new  
10      number was issued with a retroactive start date of May 31, 1989, the date of sale of the cement  
11      plant.

12          6.       On November 5, 1984, Lehigh submitted Part A of the Dangerous Waste Permit  
13      Application to Ecology. Upon submittal of the Part A application, the Lehigh CKD landfill  
14      became an *interim status* dangerous waste treatment, storage, and disposal (TSD) facility.

15          7.       Lehigh did not submit Part B of the Dangerous Waste Permit Application,  
16      which is required to obtain a *final facility* TSD permit. Instead, Lehigh closed the CKD  
17      landfill in accordance with all closure performance standards for *interim status* TSD facilities,  
18      which are given in the Washington Dangerous Waste Regulations (WAC 173-303-400), and by  
19      reference in the federal hazardous waste regulations (40 CFR Part 265, Subparts F through R).

20          8.       Ecology has determined the Lehigh CKD landfill is a dangerous waste facility  
21      as defined in WAC 173-303-040. The dangerous waste facility includes the landfill and  
22      properties adjacent to the landfill, regardless of control, which are affected by releases of  
23      dangerous constituents from the landfill.

24          9.       In 1992 and 1993, Lehigh conducted an investigation to characterize the  
25      CKD landfill and to evaluate the quality of groundwater beneath and adjacent to it. Releases  
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1 and/or potential releases of dangerous constituents from the CKD landfill were documented in  
2 the following reports:

- 3 • *Preliminary Site Characterization Report*, dated December 17, 1991, prepared by  
4 Dames & Moore Consultants; and
- 5 • *Addendum Preliminary Site Characterization Report, Metaline Falls, Washington*,  
6 dated October 5, 1993, prepared by Dames & Moore Consultants.

7 These reports document that surface and subsurface samples of CKD were collected and  
8 analyzed, and groundwater monitoring wells were installed through and adjacent to the  
9 CKD landfill. Several of the CKD samples analyzed failed the acute static fish toxicity test  
10 [WAC 173-303-110(3)(b)], demonstrating the CKD designated as a Washington state-only  
11 dangerous waste based on the *toxicity criteria* [WAC 173-303-100(5)] at the time of testing.  
12 Geochemical analyses of the CKD samples also demonstrated some of the CKD samples were  
13 strongly alkaline (pH>12.5 standard units), indicating at least part of the CKD pile also  
14 designated as a dangerous waste based on the *characteristic of corrosivity* [WAC  
15 173-303-090(6)]. Geochemical analyses of groundwater samples collected from monitoring  
16 wells demonstrated that groundwater in some areas beneath and adjacent to the CKD landfill  
17 were strongly alkaline (pH up to 13.9 standard units) and contained concentrations of arsenic  
18 and lead, which exceeded Method A groundwater cleanup levels established under MTCA  
(Chapter 70.105D RCW and Chapter 173-340 WAC).

19 10. On April 11, 1996, Lehigh submitted to Ecology the “*Final Closure Plan,*  
20 *Cement Kiln Dust Pile, Metaline Falls, Washington*” for closure of the CKD landfill. Ecology  
21 reviewed the plan, and on May 31, 1996 issued a letter to Lehigh outlining deficiencies in the  
22 plan. On June 7, 1996, Lehigh submitted a revised “*Final Closure Plan.*” Ecology reviewed  
23 and approved the revised plan in a letter to Lehigh dated June 13, 1996.

24 11. Lehigh implemented the approved closure plan during 1996. The CKD landfill  
25 was “closed” by constructing an “impermeable” cover on the surface of the CKD to minimize  
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1 surface water infiltration and by constructing a stormwater management system to convey  
2 surface water run-on and run-off to and from the landfill. Components of the cover include a  
3 geosynthetic clay liner, a drainage geocomposite (geonet), reinforcement geotextile, and cover  
4 soils. The stormwater management system consists of catch basins, internal and external  
5 drainpipes, and a sediment basin. Closure certification, including documentation of the  
6 construction of the cover and stormwater management system, is given in the "*Closure Report*  
7 *for Cement Kiln Dust (CKD) Pile, Metaline Falls, Washington*", dated June 17, 1997.

8 12. Because a dangerous waste (CKD) remains in the landfill after closure, all  
9 "clean closure" requirements in the Dangerous Waste Regulations have not been satisfied. As  
10 a result, post-closure care of the Closed CKD Pile is required. On July 20, 1995 Lehigh  
11 submitted to Ecology its "*Post-Closure Care and Maintenance Plan*," which describes  
12 maintenance and monitoring requirements for the Closed CKD landfill. The Post-Closure Care  
13 and Maintenance Plan is Exhibit G to this Decree. (The monitoring requirements in Section 5  
14 of Exhibit G are superseded by the requirements of the Compliance Monitoring Plan developed  
15 pursuant to Exhibit C, Scope of Work and Schedule.)

16 13. On December 3, 1996, Ecology issued Administrative Order No.  
17 DE96HS-E934, which required Lehigh to submit and implement another plan for short-term  
18 post-closure care of the Closed CKD Pile. The Order remained in effect until two years of  
19 post-closure groundwater monitoring data were collected.

20 14. On July 8, 1997, Lehigh submitted to Ecology the "*Short-Term Post-Closure*  
21 *Care Plan, Cement Kiln Dust (CKD) Pile, Metaline Falls, Washington*," which documented  
22 Lehigh's plans for groundwater monitoring and for maintenance of the cover and stormwater  
23 management system during the "short-term" post-closure period.

24 15. Between December 1996 and December 1998, Lehigh collected groundwater  
25 monitoring data on a monthly basis. Lehigh also maintained and repaired the cover and  
26 stormwater management system during that time period.

1           16. In April 1999, Lehigh submitted to Ecology the "*Post-Closure Care*  
2 *Groundwater Monitoring Data Review, Closed Cement Kiln Dust Pile, Metaline Falls,*  
3 *Washington,*" a report summarizing post-closure groundwater monitoring data collected  
4 between December 1996 and December 1998. These data indicated that leachate continued to  
5 emanate from the Closed CKD Pile during the short-term post-closure monitoring period,  
6 contaminating groundwater beneath and downgradient of the Closed CKD Pile. The  
7 contaminated groundwater was strongly alkaline and contained elevated concentrations of  
8 arsenic. Elevated concentrations of lead and total chromium also were detected sporadically.  
9 As a result, corrective action was required pursuant to WAC 173-303-64620.

10           17. Corrective action responsibilities may be fulfilled under an enforceable action  
11 issued pursuant to MTCA. In 1999, Ecology and Lehigh executed Agreed Order No.  
12 DE99HS-E941, which required Lehigh to conduct a remedial investigation and feasibility  
13 study under MTCA to address groundwater impacts from the Closed CKD Pile. In 2001,  
14 Ecology and Lehigh executed the First Amended Agreed Order No. DE99HS-E941.

15           18. Lehigh performed the remedial investigation, submitting a Draft Remedial  
16 Investigation Report to Ecology in February 2000 and a Final Remedial Investigation Report  
17 (RI Report) to Ecology in 2001. The RI Report stated that contaminated groundwater flowed  
18 northeast from the Closed CKD Pile, beneath State Route 31 and onto three parcels of property  
19 located in the southeast quarter of Section 21 and the southwest quarter of Section 22, T. 39 N.,  
20 R. 43 E. (WM). These properties are currently owned by Lehigh.

21           19. Some of the most highly contaminated groundwater apparently flows beneath  
22 and parallel to the former course of "North Creek" (now backfilled), a ditch that formerly  
23 transmitted water from the North Culvert beneath State Route 31 to Sullivan Creek. Until late  
24 1998, the contaminated groundwater emerged to the surface at several locations on the  
25 northeast side of the highway, but in November 1998 Lehigh backfilled with sediments a  
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1 low-lying area on properties then owned by the Washington Department of Transportation  
2 (WDOT) and Cameron Grant, thereby preventing the contaminated groundwater from reaching  
3 the surface near State Route 31. This action also reduced the potential for direct contact with  
4 high pH groundwater surfacing in the area. However, contaminated groundwater still emerges  
5 to the surface along the west bank of Sullivan Creek near the mouth of "North Creek."

6 20. Data presented in the RI Report indicated that groundwater beneath and  
7 downgradient of the CKD landfill was strongly alkaline and contained elevated concentrations  
8 of arsenic and lead. The contaminated groundwater discharges into Sullivan Creek.

9 21. Following completion of the remedial investigation, Lehigh installed a pilot In  
10 Situ Groundwater Treatment Wall in order to assess the delivery and treatment capability of  
11 in-situ carbon dioxide diffusion. The subsurface pilot permeable treatment wall demonstrated  
12 the ability to lower groundwater pH to within the range of 6.5 to 8.5, which leads to lower  
13 concentrations of arsenic in groundwater.

14 22. In 2003, Lehigh submitted to Ecology a "*Feasibility Study Technical*  
15 *Memorandum*" containing a preliminary screening of remedial alternatives for the Site. Also  
16 in 2003, Lehigh submitted to Ecology a draft "*Feasibility Study Technical Report*" (dFSTR)  
17 that evaluated a narrower list of potential remedial alternatives. Lehigh revised the dFSTR and  
18 submitted the new version to Ecology on March 3, 2005. Ecology approved the revised  
19 dFSTR by letter dated April 27, 2005, subject to Lehigh submitting some replacement pages.  
20 Lehigh submitted the replacement pages in May 2005. The public comment period for the  
21 final Revised dFSTR followed. Ecology addressed the public comments and then approved the  
22 final Revised dFSTR.

23 23. Based on the RI and final Revised dFSTR, Ecology prepared a draft Cleanup  
24 Action Plan for the Site.  
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1. Lehigh shall implement the Cleanup Action Plan (CAP), Exhibit B, and all attachments developed for the CAP pursuant to its terms. The CAP provides for the following actions:

(b) In accordance with the Scope of Work and Schedule, Exhibit C, installing, operating, and maintaining a gravity drain along the southern edge of the Closed CKD Pile to direct uncontaminated groundwater away from the Closed CKD Pile.

(d) In accordance with the Scope of Work and Schedule, Exhibit C, providing for and maintaining institutional controls in the form of: (1) fences; (2) signs; and (3) recording a restrictive covenant, Exhibit F (Declaration of Covenant), as provided in Section XX of this Decree.

## CONSENT DECREE

2. Lehigh agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the Scope of Work to cover these actions. All work conducted by Lehigh under this Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

3. All Exhibits to this Decree are incorporated by reference as integral and enforceable parts of the Decree.

## **VII. DESIGNATED PROJECT COORDINATORS**

The project coordinator for Ecology is:

Name: Mr. William Fees  
Address: Department of Ecology  
4601 North Monroe  
Spokane, WA 99205-1296  
Telephone: (509) 329-3589  
FAX: (509) 329-3572

The project coordinator for Lehigh is:

Name: Ms. Elizabeth Mikols  
Address: Lehigh Cement Company  
7660 Imperial Way  
Allentown, PA 18195  
Telephone: (610) 366-4753  
FAX: (610) 366-4684

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Lehigh and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor changes to the work to be performed without formal amendments to this Decree. Minor changes will be documented in writing by Ecology. Substantial changes shall require amendment of this Consent Decree.

1 Any Party may change its respective project coordinator. Written notification shall be  
2 given to the other Party at least ten (10) calendar days prior to the change.

### 3 **VIII. PERFORMANCE**

4 All work performed pursuant to this Decree shall be under the direction and  
5 supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or  
6 equivalent, with experience and expertise in hazardous waste site investigation and cleanup.  
7 Ecology acknowledges that Lehigh's current consultant, GeoSyntec Consultants, meets the  
8 requirements of this Section VIII. If Lehigh subsequently retains a different consultant, Lehigh  
9 shall notify Ecology in writing of the identity of such engineer(s) or hydrogeologist(s), or  
10 others, and of any contractors and subcontractors to be used in carrying out the terms of this  
11 Decree, in advance of their involvement at the Site.

12 Any construction work performed pursuant to this Decree shall be under the  
13 supervision of a professional engineer or a qualified technician under the direct supervision of  
14 a professional engineer. The professional engineer must be registered in the State of  
15 Washington, except as provided in RCW 18.43.130.

### 16 **IX. ACCESS**

17 Ecology or any Ecology authorized representative shall have full authority to enter and  
18 freely move about all property at the Site that Lehigh either owns, controls, or has access rights  
19 to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
20 contracts related to the work being performed pursuant to this Decree; reviewing Lehigh's  
21 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
22 samples as Ecology may deem necessary; using a camera, sound recording, or other  
23 documentary type equipment to record work done pursuant to this Decree; and verifying the  
24 data submitted to Ecology by Lehigh. Lehigh shall make all reasonable efforts to secure access  
25 rights for those properties within the Site not owned or controlled by Lehigh where remedial  
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1 actions will be performed pursuant to this Decree. Due to the remote location of the Site,  
2 Ecology or any Ecology authorized representative shall give Lehigh notice 48 hours before  
3 entering any portion of the Site owned or controlled by Lehigh unless an emergency prevents  
4 such notice. All Parties who access the Site pursuant to this paragraph shall comply with the  
5 approved Health and Safety Plans. Ecology employees and their representatives shall not be  
6 required to sign any liability release or waiver as a condition of access.

#### 7 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

8 With respect to the implementation of this Decree, Lehigh shall make the results of all  
9 sampling, laboratory reports, and test results generated by it or on its behalf available to  
10 Ecology and shall submit these results in accordance with Section XI of this Decree.

11 All sampling data shall be submitted to Ecology according to the requirements of WAC  
12 173-340-840(5) and the Ground Water Sampling Data Submittal Requirements, Exhibit E.  
13 Groundwater sampling data shall also be submitted in an electronic format agreed to by  
14 Ecology's project coordinator. These submittals shall be provided to Ecology in accordance  
15 with Section XI of this Decree.

16 If requested by Ecology, Lehigh shall allow split or duplicate samples to be taken by  
17 Ecology or its authorized representative of any samples collected by Lehigh pursuant to the  
18 implementation of this Decree. Lehigh shall notify Ecology seven (7) days in advance of any  
19 sample collection or non-routine work activity at the Site, unless an emergency prevents such  
20 notice. Ecology shall, upon request, allow split or duplicate samples to be taken by Lehigh or  
21 its authorized representative of any samples collected by Ecology pursuant to the  
22 implementation of this Decree provided it does not interfere with Ecology's sampling.  
23 Without limitation on Ecology's rights under Section IX, Ecology shall provide Lehigh the  
24 same seven (7) day notice prior to any sample collection activity unless an emergency prevents  
25 such notice.  
26

1 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be  
2 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to  
3 be conducted, unless otherwise approved by Ecology.

#### 4 **XI. PROGRESS REPORTS**

5 1. Lehigh shall submit to Ecology written progress reports that describe the actions  
6 taken during the previous reporting period to implement the requirements of this Decree. The  
7 progress reports shall include the following:

8 A. A list of on-site activities that have taken place during the reporting period;

9 B. Detailed description of any deviations from required tasks not otherwise  
10 documented in writing and provided to Ecology;

11 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)  
12 during the current reporting period and any planned deviations in the upcoming reporting  
13 period;

14 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
15 compliance with the schedule;

16 E. All raw data (including laboratory analyses) received by Lehigh during the past  
17 reporting period and an identification of the source of the sample; and

18 F. A list of deliverables for the upcoming reporting period if different from the  
19 Scope of Work and Schedule (Exhibit C).

20 2. Progress reports shall be submitted to Ecology in accordance with the following  
21 schedule:

22 A. Monthly, during construction of the cleanup action;

23 B. Quarterly, beginning with initial start-up of the groundwater treatment system  
24 (start of the Optimization Phase); and

25 C. Annually, beginning July 10 of the fifth year after initial start-up of the  
26 groundwater treatment system (three years after completing the Optimization Phase).

1           3.       All progress reports shall be submitted by the tenth (10th) day of the reporting  
2 period in which they are due after the effective date of this Decree. Unless otherwise specified,  
3 progress reports and any other documents submitted pursuant to this Decree shall be sent either  
4 by certified mail, return receipt requested, or by commercial delivery service, signature  
5 required upon receipt, to Ecology's project coordinator.

## 6                                   **XII.   RETENTION OF RECORDS**

7           During the pendency of this Decree and for ten (10) years from the date this Decree is  
8 no longer in effect as provided in Section XXVIII, Lehigh shall preserve all records, reports,  
9 documents, and underlying data in its possession that are relevant and material to the  
10 implementation of this Decree. Lehigh shall insert a similar record retention requirement into  
11 all contracts with project contractors and subcontractors. Upon request of Ecology, Lehigh  
12 shall make all non-privileged records available to Ecology and allow access for review within a  
13 reasonable time.

## 14                               **XIII.   TRANSFER OF INTEREST IN PROPERTY**

15           No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
16 interest in any portion of the Site shall be consummated by Lehigh without provision for  
17 continued operation and maintenance of any containment system, treatment system, and  
18 monitoring system installed or implemented pursuant to this Decree.

19           Prior to Lehigh's transfer of any interest in all or any portion of the Site, during the  
20 effective period of this Decree, Lehigh shall serve a copy of this Decree upon the prospective  
21 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least  
22 thirty (30) days prior to any transfer, Lehigh shall notify Ecology of said transfer. In any  
23 instrument that transfers any interest in the Site, Lehigh shall include a provision stating that  
24 the property is subject to the restrictions on the use of the property contained in this Decree,  
25 including all attachments thereto.

#### **XIV. RESOLUTION OF DISPUTES**

A. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's written decision, Lehigh has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision.

(2) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(3) Lehigh may then request regional management review of the decision. This request shall be submitted in writing to the Eastern Regional Toxics Cleanup Program Section Manager within fourteen (14) days of receipt of Ecology's project coordinator's decision.

(4) Ecology's Eastern Regional Toxics Cleanup Program Section Manager shall conduct a review of the dispute, and shall, if requested, speak with Lehigh (telephonically, at a minimum) in an effort to resolve the dispute. Ecology's Eastern Regional Toxics Cleanup Program Section Manager shall issue a written decision regarding the dispute within thirty (30) days of Lehigh's request for review.

(5) If Lehigh finds Ecology's Eastern Regional Toxics Cleanup Program Section Manager's decision unacceptable, Lehigh may then request final management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within fourteen (14) days of receipt of the Regional Section Manager's decision.

(6) Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute, and shall, if requested, speak with Lehigh (telephonically, at a minimum) in an effort to resolve the dispute. Ecology's Toxics Cleanup Program Manager shall issue a written

1 decision regarding the dispute within thirty (30) days of Lehigh's request for review. The  
2 Program Manager's decision shall be Ecology's final decision on the disputed matter.

3 B. If Ecology's final written decision is unacceptable to Lehigh, Lehigh has the  
4 right to submit the dispute to the Court for resolution. The Parties agree that one judge should  
5 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this  
6 Decree. In the event Lehigh presents an issue to the Court for review, the Court shall review  
7 any remedial or investigative action or decision of Ecology on the basis of whether such action  
8 or decision was arbitrary and capricious, or, if the Court determines that that another standard  
9 of review is appropriate, that Ecology's action or decision was not in accord with such  
10 standard.

11 C. The Parties agree to only utilize the dispute resolution process in good faith and  
12 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
13 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,  
14 the other Party may seek sanctions.

15 D. Implementation of these dispute resolution procedures shall not provide a basis  
16 for delay of any activities required in this Decree, unless Ecology agrees in writing to a  
17 schedule extension or the Court so orders.

18 E. During the dispute resolution process, Lehigh may submit for Ecology's  
19 consideration any data, reports, or other documents it considers relevant to the dispute.

## 20 **XV. AMENDMENT OF CONSENT DECREE**

21 Except as provided otherwise in Section VII with respect to minor changes in the work to be  
22 performed and Section XVI with respect to extensions of schedule that do not constitute a  
23 substantial change to this Decree, this Decree may only be amended by a written stipulation  
24 among the Parties that is entered by the Court, or by order of the Court. Such amendment shall  
25 become effective upon entry by the Court. Agreement to amend the Decree shall not be  
26 unreasonably withheld by any Party.

1 Lehigh shall submit in writing any request for an amendment to Ecology for approval.  
2 Ecology shall indicate its approval or disapproval in writing in a timely manner after the  
3 request for amendment is received. If the amendment to the Decree represents a substantial  
4 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
5 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
6 not agree to any proposed amendment, the disagreement may be addressed through the dispute  
7 resolution procedures described in Section XIV of this Decree.

## 8 **XVI. EXTENSION OF SCHEDULE**

9 A. An extension of schedule shall be granted only when a request for an extension  
10 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
11 deadline for which the extension is requested, and good cause exists for granting the extension.  
12 All extensions shall be requested in writing. The request shall specify:

- 13 (1) The deadline that is sought to be extended;
- 14 (2) The length of the extension sought;
- 15 (3) The reason(s) for the extension; and
- 16 (4) Any related deadline or schedule that would be affected if the extension were  
17 granted.

18 B. The burden shall be on Lehigh to demonstrate that the request for such  
19 extension has been submitted in a timely fashion and that good cause exists for granting the  
20 extension. Good cause includes, but is not limited to:

- 21 (1) Circumstances beyond the reasonable control and despite the due diligence of  
22 Lehigh including delays caused by unrelated third parties or Ecology, such as (but not limited  
23 to) delays by Ecology in reviewing, approving, or modifying documents submitted by Lehigh;  
24 or
- 25 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or  
26 other unavoidable casualty such as war or act of terrorism; or

1 (3) Endangerment as described in Section XVII.

2 However, neither increased costs of performance of the terms of the Decree nor  
3 changed economic circumstances shall be considered circumstances beyond the reasonable  
4 control of Lehigh.

5 C. Ecology shall act upon any written request for extension in a timely fashion.  
6 Ecology shall give Lehigh written notification in a timely fashion of any extensions granted  
7 pursuant to this Decree. A requested extension shall not be effective until approved by  
8 Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not  
9 be necessary to amend this Decree pursuant to Section XV when a schedule extension is  
10 granted.

11 D. An extension shall only be granted for such period as Ecology determines is  
12 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety  
13 (90) days only as a result of:

14 (1) Delays in the issuance of a necessary permit which was applied for in a timely  
15 manner; or

16 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

17 (3) Endangerment as described in Section XVII.

## 18 **XVII. ENDANGERMENT**

19 If, for any reason, Ecology determines that any activity being performed at the Site is  
20 creating or has the potential to create a danger to human health or the environment, Ecology  
21 may direct Lehigh to cease such activities for such period of time as it deems necessary to  
22 abate the danger. Lehigh shall immediately comply with such direction.

23 If, for any reason, Lehigh determines that any activity being performed at the Site is  
24 creating or has the potential to create a danger to human health or the environment, Lehigh  
25 may cease such activities. Lehigh shall notify Ecology's project coordinator as soon as  
26

1 possible, but no later than twenty-four (24) hours after making such determination or ceasing  
2 such activities. Upon Ecology's direction, Lehigh shall provide Ecology with documentation  
3 of the basis for the determination or cessation of such activities. If Ecology disagrees with  
4 Lehigh's cessation of activities, it may direct Lehigh to resume such activities.

5 If Ecology concurs with or orders a work stoppage pursuant to this section, Lehigh's  
6 obligations with respect to the ceased activities shall be suspended until Ecology determines  
7 the danger is abated, and the time for performance of such activities, as well as the time for any  
8 other work dependent upon such activities, shall be extended, in accordance with Section XVI,  
9 for such period of time as Ecology determines is reasonable under the circumstances.

10 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or  
11 contractors to take or require appropriate action in the event of an emergency.

#### 12 **XVIII. COVENANT NOT TO SUE**

13 A. Covenant Not to Sue: In consideration of Lehigh's compliance with the terms  
14 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions  
15 against Lehigh regarding the release or threatened release of hazardous substances covered by  
16 this Decree.

17 This Decree covers only the Site specifically identified in Exhibit A and those  
18 hazardous substances that Ecology knows are located at the Site as of the date of entry of this  
19 Decree. This Decree does not cover any other hazardous substance or area. Ecology retains all  
20 of its authority relative to any substance or area not covered by this Decree.

21 This Covenant Not to Sue shall have no applicability whatsoever to:

- 22 (1) Criminal liability;  
23 (2) Liability for damages to natural resources;  
24 (3) Any Ecology action, including cost recovery, against potentially liable persons  
25 not a party to this Decree.  
26

1 If factors not known to Ecology at the time of entry of the settlement agreement are  
2 discovered and present a previously unknown threat to human health and the environment, the  
3 Court shall amend this covenant not to sue.

4 B. Reopeners: Pursuant to RCW 70.105D.050, Ecology specifically reserves the  
5 right to institute legal or administrative action against Lehigh to require it to perform additional  
6 remedial actions at the Site, and to pursue appropriate cost recovery, under the following  
7 circumstances. Lehigh specifically reserves the right to assert any and all defenses to such  
8 action.

9 (1) Upon Lehigh's failure to meet the requirements of this Decree, including, but  
10 not limited to, failure of the remedial action to meet the cleanup standards identified in the  
11 CAP (Exhibit B);

12 (2) Upon Ecology's determination that remedial action beyond the terms of this  
13 Decree is necessary to abate an imminent and substantial endangerment to human health or the  
14 environment;

15 (3) Upon the availability of new information regarding factors previously unknown  
16 to Ecology, including the nature or quantity of hazardous substances at the Site, that present a  
17 previously unknown threat to human health or the environment, and Ecology's determination,  
18 in light of this information, that further remedial action is necessary at the Site to protect  
19 human health or the environment; or

20 (4) Upon Ecology's determination that additional remedial actions are necessary to  
21 achieve cleanup standards within the reasonable restoration timeframe set forth in the CAP.

22 C. Except in the case of an emergency, prior to instituting legal or administrative  
23 action against Lehigh pursuant to paragraph B. above, Ecology shall provide Lehigh with thirty  
24 (30) days advance notice of such action.

1 **XIX. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against Lehigh, the Parties agree that Lehigh is  
3 entitled to protection against claims for contribution for matters addressed in this Decree as  
4 provided by RCW 70.105D.040(4)(d). For the purposes of this section only, "matters  
5 addressed" include all remedial actions undertaken at the Site pursuant to this Decree.  
6 "Matters addressed" also include all remedial actions previously undertaken at the Site to  
7 characterize the contamination or to enable the selection of a cleanup action, and all oversight  
8 costs paid to Ecology.

9 **XX. LAND USE RESTRICTIONS**

10 Because institutional controls are required at the Site pursuant to WAC  
11 173-340-440(4), Lehigh agrees that a Restrictive Covenant (Exhibit F, Declaration of  
12 Covenant) shall be recorded with the office of the Pend Oreille County Auditor within sixty  
13 (60) days after Lehigh notifies Ecology that construction of the cleanup action is complete. The  
14 Restrictive Covenant shall restrict future uses of the Site. Lehigh will provide Ecology with a  
15 copy of the recorded Restrictive Covenant within ten (10) days of the recording date.

16 **XXI. FINANCIAL ASSURANCE**

17 A. Pursuant to WAC 173-340-440(11) and consistent with WAC 173-303-64620,  
18 Lehigh shall maintain sufficient and adequate financial assurance mechanisms to cover all  
19 costs associated with the operation and maintenance of the remedial action at the Site as set  
20 forth in the CAP and its attachments, including institutional controls, compliance monitoring,  
21 and corrective measures. In the absence of final regulations governing financial assurance for  
22 corrective action, the Financial Assurance for Corrective Action Proposed Rule, 51 FR 37853  
23 (October 24, 1986), the financial assurance provisions of Corrective Action for Releases from  
24 Solid Waste Management Units Advance Notice of Proposed Rulemaking, 61 FR 19432  
25 (May 1, 1996), the Interim Guidance on Financial Assurance for Facilities Subject to RCRA  
26 Corrective Action (U.S. EPA, September 30, 2003), and the financial assurance provisions of

1 the Corrective Action for Solid Waste Management Units at Hazardous Waste Management  
2 Facilities, 55 FR 30798 (July 27, 1990) may be used as guidance. Acceptable mechanisms  
3 include trust funds, surety bonds guaranteeing performance, letters of credit, insurance, the  
4 financial test, and corporate guarantee or another instrument if Lehigh demonstrates to the  
5 satisfaction of Ecology that another instrument provides an acceptable level of financial  
6 assurance.

7 B. Within sixty (60) days of the effective date of this Decree, Lehigh shall submit  
8 to Ecology for review and approval an estimate of the costs that it will incur in carrying out the  
9 terms of this Decree, including operation, maintenance, and compliance monitoring. Lehigh  
10 also shall include in its submittal an updated estimate of its post-closure care costs, as provided  
11 in WAC 173-303-400(3)(c)(vi) and WAC 173-303-620(5). Within sixty (60) days after  
12 Ecology approves the aforementioned cost estimate, Lehigh shall provide proof of financial  
13 assurance sufficient to cover all such remedial action and post-closure care costs in a form  
14 acceptable to Ecology. The provisions of Section XXI of this Decree shall stand in lieu of any  
15 other requirement for Lehigh to provide proof of financial assurance for post-closure care or to  
16 update the estimated costs of providing post-closure care for the Closed CKD Pile.

17 C. In subsequent years, Lehigh shall adjust the financial assurance coverage  
18 annually in accordance with the schedule set by Ecology, in which regulated entities provide  
19 Financial Assurance by March 31. Lehigh will provide Ecology's project manager with  
20 documentation of the updated financial assurance to reflect:

- 21 (1) Inflation; and  
22 (2) Changes in cost estimates based on the completion of specific remedial actions  
23 or post-closure care tasks.

24 D. In addition, Lehigh shall adjust cost estimates within thirty (30) days of  
25 incorporation into this Decree of any modification or revision to the CAP that result in  
26 significant increases to the cost or expected duration of remedial actions. Any adjustments for

1 inflation since the most recent preceding anniversary date shall be made concurrent with  
2 adjustments for changes in cost estimates.

3 E. Lehigh shall notify Ecology's project coordinator and Ecology's financial  
4 assurance officer by certified mail of the commencement of a voluntary or involuntary  
5 bankruptcy proceeding under Title 11, United States Code, naming Lehigh as debtor, within  
6 ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee  
7 must make such a notification if he is named as debtor as required under the terms of the  
8 corporate guarantee.

9 F. Once Lehigh has established financial assurance for remedial action and  
10 post-closure care with an acceptable mechanism, mentioned above, Lehigh will be deemed to  
11 be without the required financial assurance:

12 (1) In the event of bankruptcy of the trustee or issuing institution; or

13 (2) The authority of the trustee institution to act as trustee has been suspended or  
14 revoked; or

15 (3) The authority of the institution issuing the surety bond, letter or credit, or  
16 insurance policy has been suspended or revoked.

17 G. In the event of bankruptcy of the trustee or a suspension or revocation of the  
18 authority of the trustee institution to act as a trustee, Lehigh must establish financial assurance  
19 by any means specified in WAC 173-303-620 within sixty (60) days after such an event.

20 H. Ecology's financial assurance officer is:

21 Name: Kimberly Goetz  
22 Address: Department of Ecology  
Hazardous Waste and Toxics Reduction Program  
P.O. Box 47600  
Olympia, Washington 98504-7600  
23 Telephone: (360) 407-6754  
24 FAX: (360) 407-6715  
25 E-mail: [kgoe461@ecy.wa.gov](mailto:kgoe461@ecy.wa.gov)  
26

1 **XXII. INDEMNIFICATION**

2 Lehigh agrees to indemnify and save and hold the State of Washington, its employees,  
3 and agents harmless from any and all claims or causes of action for death or injuries to persons  
4 or for loss or damage to property to the extent arising from or on account of acts or omissions  
5 of Lehigh, its employees, or agents in entering into and implementing this Decree. However,  
6 Lehigh shall not indemnify the State of Washington, its employees, or agents, nor save nor  
7 hold any of them harmless, from any claims or causes of action for death or injuries to persons  
8 or for loss or damage to property to the extent arising from or on account of the negligent acts  
9 or omissions of the State of Washington, or the employees or agents of the State, in entering  
10 into or implementing this Decree.

11 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

12 A. All actions carried out by Lehigh pursuant to this Decree shall be done in  
13 accordance with all applicable federal, state, and local requirements, including requirements to  
14 obtain necessary permits, except as provided in RCW 70.105D.090.

15 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters  
16 70.94, 70.95, 70.105, 77.55 and 90.58 RCW and of any laws requiring or authorizing local  
17 government permits or approvals for the remedial action under this Decree that are known to  
18 be applicable at the time of entry of the Decree have been included in Exhibit B, the CAP, and  
19 are binding and enforceable requirements of the Decree.

20 Lehigh has a continuing obligation to determine whether additional permits or  
21 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
22 action under this Decree. In the event either Lehigh or Ecology determines that additional  
23 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
24 remedial action under this Decree, it shall promptly notify the other party of this determination.  
25 Ecology shall determine whether Ecology or Lehigh shall be responsible to contact the  
26 appropriate state and/or local agencies. If Ecology so requires, Lehigh shall promptly consult

1 with the appropriate state and/or local agencies and provide Ecology with written  
2 documentation from those agencies of the substantive requirements those agencies believe are  
3 applicable to the remedial action. Ecology shall make the final determination on the additional  
4 substantive requirements that must be met by Lehigh and on how Lehigh must meet those  
5 requirements. Ecology shall inform Lehigh in writing of these requirements. Once established  
6 by Ecology, the additional requirements shall be enforceable requirements of this Decree.  
7 Lehigh shall not begin or continue the remedial action potentially subject to the additional  
8 requirements until Ecology makes its final determination.

9 Ecology shall ensure that notice and opportunity for comment is provided to the public  
10 and appropriate agencies prior to establishing the substantive requirements under this section.

11 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
12 exemption from complying with the procedural requirements of the laws referenced in RCW  
13 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary  
14 for the state to administer any federal law, the exemption shall not apply and Lehigh shall  
15 comply with both the procedural and substantive requirements of the laws referenced in RCW  
16 70.105D.090(1), including any requirements to obtain permits.

#### 17 **XXIV. REMEDIAL AND INVESTIGATIVE COSTS**

18 Lehigh agrees to pay costs incurred by Ecology pursuant to this Decree and consistent  
19 with WAC 173-340-550(2). These costs shall include work performed by Ecology or its  
20 contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and  
21 Decree preparation, negotiations, oversight, and administration. These costs shall include  
22 work performed subsequent to the entry of this Decree. In addition, Lehigh shall pay Ecology  
23 \$\_\_\_\_\_ (this amount will be updated before the Decree takes effect), which the Parties agree  
24 represent all costs incurred prior to the entry of this Decree for which Lehigh has not  
25 previously reimbursed Ecology. Ecology costs shall include costs of direct activities and  
26

1 support costs of direct activities as defined in WAC 173-340-550(2). Lehigh agrees to pay the  
2 required amount within ninety (90) days of receiving from Ecology an itemized statement of  
3 costs that includes a summary of costs incurred, an identification of involved staff, and the  
4 amount of time spent by involved staff members on the project. A general statement of work  
5 performed will be provided upon request. Itemized statements shall be prepared quarterly.  
6 Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of  
7 receipt of the itemized statement will result in interest charges at the rate of twelve percent  
8 (12%) per annum, compounded monthly.

#### 9 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

10 If Ecology determines that Lehigh has failed without good cause to implement the  
11 requirements of this Decree, in whole or in part, Ecology may, after reasonable notice to  
12 Lehigh, perform any or all such requirements of the Decree that remain incomplete. If  
13 Ecology performs all or portions of the Decree because of Lehigh's failure to comply with its  
14 obligations under this Decree, Lehigh shall reimburse Ecology for the costs of doing such work  
15 in accordance with Section XXIV of this Decree, provided that Lehigh is not obligated under  
16 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
17 scope of this Decree.

#### 18 **XXVI. PERIODIC REVIEW**

19 As remedial action, including ground water monitoring, continues at the Site, the  
20 Parties agree to review the progress of remedial action at the Site, and to review the data  
21 accumulated as a result of monitoring the Site as often as is necessary and appropriate under  
22 the circumstances. At least every five years after initiation of cleanup action at the Site (start  
23 of construction), the Parties shall meet to discuss the status of the Site and the need, if any, for  
24 further remedial action at the Site. Ecology reserves the right to require further remedial action  
25 at the Site under the circumstances described in Section XVIII of this Decree. This provision  
26

1 shall remain in effect for the duration of the Decree. A report, which addresses the review  
2 criteria in WAC 173-340-420, shall be submitted by Lehigh to Ecology ninety (90) days before  
3 every 5-year anniversary of the completion of construction.

#### 4 **XXVII. PUBLIC PARTICIPATION**

5 Ecology shall maintain the responsibility for public participation at the Site. However,  
6 Lehigh shall cooperate with Ecology, and shall:

7 A. If agreed to by Ecology, prepare drafts of public notices and fact sheets at  
8 important stages of the remedial action, such as the submission of work plans and engineering  
9 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and  
10 prepare and distribute public notices of Ecology's presentations and meetings;

11 B. Notify Ecology's project coordinator prior to the preparation of all press  
12 releases and fact sheets, and before major meetings with the interested public and local  
13 governments. Likewise, Ecology shall notify Lehigh prior to the issuance of all press releases  
14 and fact sheets, and before major meetings with the interested public and local governments.  
15 For all press releases, fact sheets, meetings, and other outreach efforts by Lehigh that do not  
16 receive prior Ecology approval, Lehigh shall clearly indicate to its audience that the press  
17 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by  
18 Ecology;

19 C. Participate in public presentations on the progress of the remedial action at the  
20 Site. Participation may be through attendance at public meetings or public hearings to assist in  
21 answering questions, or as a presenter;

22 D. In cooperation with Ecology, arrange and/or continue information repositories  
23 at the following locations:

24 (1) Cutter Theater Building at 302 Park Street, Metaline Falls, WA 99153,  
25 (509) 446-3232.  
26

1 (2) Ecology's Eastern Regional Office at 4601 North Monroe, Spokane, WA  
2 99205-1296, (509) 329-3400.

3 At a minimum, copies of all public notices, fact sheets, and press releases; all quality  
4 assured monitoring data; remedial actions plans and reports, supplemental remedial planning  
5 documents, and all other similar documents relating to performance of the remedial action  
6 required by this Decree shall be promptly placed in these repositories.

#### 7 **XXVIII. DURATION OF DECREE**

8 The remedial program required pursuant to the Decree shall be maintained and  
9 continued until Lehigh has received written notification from Ecology that the requirements of  
10 this Decree have been satisfactorily completed or until the Court determines that the  
11 requirements of this Decree have been satisfactorily completed. This Decree shall remain in  
12 effect until dismissed by this Court. When dismissed, Section XVIII, Covenant Not to Sue,  
13 and Section XIX, Contribution Protection, shall survive.

#### 14 **XXIX. CLAIMS AGAINST THE STATE**

15 Lehigh hereby agrees that it will not seek to recover any costs accrued in implementing  
16 the remedial action required by this Decree from Ecology; and further, that Lehigh will make  
17 no claim against the State Toxics Control Account or any Local Toxics Control Account for  
18 any costs incurred in implementing this Decree. Except as provided above, however, Lehigh  
19 expressly reserves its right to seek to recover any costs incurred in implementing this Decree  
20 from any other potentially liable person.

#### 21 **XXX. EFFECTIVE DATE**

22 This Decree is effective upon the date it is entered by the Court.

#### 23 **XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

24 This Decree has been the subject of public notice and comment under RCW  
25 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to  
26

1 a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup  
2 standards established under Chapter 173-340 WAC.

3 If the Court withholds or withdraws its consent to this Decree, it shall be null and void  
4 at the option of any party and the accompanying Complaint shall be dismissed without costs  
5 and without prejudice. In such an event, no party shall be bound by the requirements of this  
6 Decree.

7 STATE OF WASHINGTON  
8 DEPARTMENT OF ECOLOGY

ROB McKENNA  
Attorney General

9 \_\_\_\_\_  
10 JAMES J. PENDOWSKI  
11 Program Manager  
12 Toxics Cleanup Program

\_\_\_\_\_  
ANDREW A. FITZ, WSBA #22169  
Assistant Attorney General

13 Date: \_\_\_\_\_

Date: \_\_\_\_\_

14 LEHIGH  
15 CEMENT COMPANY

16 By: \_\_\_\_\_  
17 Title: \_\_\_\_\_

18 Date: \_\_\_\_\_

19 ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

21 \_\_\_\_\_  
22 JUDGE  
23 Pend Oreille County Superior Court  
24  
25  
26